

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TIFFANY T. SPENCER

PLAINTIFF

v.

CAUSE NO. 1:23-CV-223-LG-RPM

**SHELLPOINT MORTGAGE
SERVICING**

DEFENDANT

**ORDER STRIKING PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS, MEMORANDUM AND AMENDED COMPLAINT**

BEFORE THE COURT, *sua sponte* are the following pleadings: [18]

Plaintiff's Response to Motion to Dismiss, [18-1] Amended Complaint, and [19]

Memorandum in Opposition re Motion to Dismiss.

DISCUSSION

The plaintiff filed a pro se complaint against the defendant, Shellpoint Mortgage Servicing. Defendant was served on May 21, 2024.¹ Shellpoint then filed a timely Rule 12(b) motion to dismiss for failure to state a claim on June 11, 2024. Seventeen days later, on June 28, 2024, this Court granted the plaintiff's motion for

¹ Counsel for plaintiff entered an appearance in this matter on May 17, 2024 [ECF 12].

extension of time to file a response to the motion to dismiss. On July 12, 2024, fifty-two days after the motion to dismiss was filed plaintiff filed a “response” with an attached “amended complaint”.

“A district court has inherent power to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants, and is vested with inherent power to manage its own affairs.” *United States v. Colomb*, 419 F.3d 292, 299 (5th Cir. 2005). Fed. R. Civ. P. 12(f) confers on the court the authority, upon motion by a party or *sua sponte*, to order as stricken from any pleading any “redundant, immaterial, impertinent, or scandalous matter.” Rule 15 of the Federal Rules of Civil Procedure provides:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading **only with the opposing party's written consent or the court's leave.** The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15(a)(1)(2).(emphasis added)

The response and memorandum in support of the response are not responsive to the defendant’s 12(b) motion to dismiss and the issues raised in the motion. Instead, it merely references the attached “amended complaint”. In addition, the purported amended complaint was submitted well past twenty-one days after the

original complaint was served and after the 12(b) responsive pleading was served, without obtaining consent from the defendant nor having been granted leave by the Court.

The Court therefore finds that Plaintiff's [18] Response, [18-1] Amended Complaint, and [19] Memorandum should be, and are hereby stricken pursuant to Fed. R. Civ. P. 12(f). The Court further finds that the plaintiff should be granted an additional seven days from the date of this Order to file an appropriate response to the motion to dismiss, a memorandum in response, and may file a motion for leave to file an amended complaint.²

IT IS, THEREFORE, ORDERED AND ADJUDGED the Plaintiff's [18] Response and [18-1] Amended Complaint and [19] Memorandum are stricken from the record. The plaintiff is permitted to file an appropriate response to the motion to dismiss, a memorandum in response, and may file a motion for leave to file an amended complaint within seven days of the date of this order.

SO ORDERED AND ADJUDGED this the 19th day of August, 2024.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.

UNITED STATES DISTRICT JUDGE

² See L.U.Civ.R. 15. "A proposed amended pleading must be an exhibit to a motion or leave to file such pleading."